

MINNESOTA ENVIRONMENTAL QUALITY BOARD

**In the Matter of the Proposed
Adoption of Amendments to
Environmental Review Rules
For Large Energy Facilities
and High Voltage Transmission Lines,
LEAGUE
Repeal of Existing Rules, and
Technical Amendments to
Power Plant Siting Rules**

**COMMITTEE OF MINNESOTA
CENTER FOR ENVIRONMENTAL
ADVOCACY, IZAAK WALTON
OF AMERICA, AND MINNESOTANS
FOR AN ENERGY EFFICIENT
ECONOMY**

**Minnesota Rules chapter 4410
Minnesota Rules chapter 4400**

The Minnesota Center for Environmental Advocacy is a private, nonprofit organization founded in 1974 with the mission to use law, science, and research to protect Minnesota's natural resources and the health of its people. The Izaak Walton League of America is a diverse group of 50,000 men and women dedicated to protecting the nation's soil, air, woods, waters and wildlife. Minnesotans for an Energy Efficient Economy is a nonprofit organization leading the transition to a clean, efficient, and fair energy system.

The Minnesota Center for Environmental Advocacy, Izaak Walton League of America and Minnesotans for an Energy Efficient Economy (hereinafter "MCEA") recognizes and appreciates the efforts of the EQB staff in preparing and revising the proposed amendments. The proposed amendments reflect efforts made by the EQB staff to facilitate public involvement in the Certificate of Need process while accommodating the tight statutory timeline mandated for environmental review. Nonetheless, several proposed rules should be clarified or slightly modified to protect public participation and ensure the adequacy of environmental review.

The following sections explain MCEA's concerns and recommendations regarding the Chapter 4410 Proposed Rules. MCEA respectfully requests that the EQB incorporate proposed language changes included in these comments into the final amendments to Minnesota Rules chapters 4400 and 4410.

I. THE RULES SHOULD BE CLARIFIED AND MODIFIED TO PROTECT PUBLIC INVOLVEMENT IN THE ENVIRONMENTAL REVIEW PROCESS.

In comments and testimony provided regarding amendments to the Chapter 4400 siting rules, MCEA stressed the importance of bringing the public into the permitting process as early as possible. Allowing early and open public participation tempers resistance to the final result and allows timely introduction of impacts and alternatives that otherwise might not have been analyzed.

Environmental review during the certificate of need (hereinafter “CON”) process is the first opportunity for public participation in the environmental review of major energy facilities in Minnesota. The public must be able to participate effectively in the environmental review for certificates of need because, once a CON is issued, certain critical concerns related to issues of need (such as the time type, timing, system configuration, and voltage of a proposed project) may be considered only at this time.

MCEA requests that the proposed rules be changed to require that applicants for a CON disclose the probable sites and routes for power plants and transmission lines and require that notice of the application be provided at this early point in the process to, at a minimum, those property owners who will receive notice of the project when the siting process gets underway. Furthermore, the standard applied to the scoping decision should be modified to provide the public with a greater ability to determine the impacts and alternatives to be analyzed.

A. Proposed Rule 4410.7025 Subpart 1 should be amended to require applicants for a CON or HVTL certification to disclose probable sites and routes for the proposed projects.

When a CON is required, critical questions of need are considered exclusively in the CON process and those who will live near the proposed project will be most affected and have a major stake in the process. Requiring the applicant to identify the possible sites or routes for a large energy facility will allow adequate notice of the proposed project to be provided to people likely to be affected by the proposed project and poses little inconvenience for an applicant. In virtually every case, the proposed sites for a power plant and proposed routes for a transmission line are known before the applicant prepares the expensive and voluminous CON application. By not requiring identification of the proposed site and route, the people who will be vitally affected by the CON decision are excluded from critical portions the process. Claims of unfairness are certain to be heard from those who will be affected by a project, but only learn of it after most of the key public decisions, those regarding need, type, timing, system configuration and voltage have been made.

4410.7025 COMMENCEMENT OF ENVIRONMENTAL REVIEW.

Subpart 1. Certificate of need application. A person who submits an application to the Public Utilities Commission for a certificate of need for a LEPGP or a HVTL pursuant to Minnesota Statutes, section 216B.243, shall at the same time submit a copy of the application and all accompanying materials required by the PUC to the EQB and shall identify the location of any sites for the LEPGF or routes for the HVTL under consideration by the applicant, including those sites which will be proposed as the primary and alternative sites as a part of the siting process. .

Subp. 2. Transmission planning report. A person who submits a transmission planning report to the Public Utilities Commission with a request for certification of a high voltage transmission line pursuant to Minnesota Statutes, section 216B.2425, shall at the same time submit a copy of the report and all accompanying materials required by the PUC to the EQB, identifying in such materials the location of routes for the HVTL under consideration by the applicant, including those routes which will be proposed as a part of the siting process.

B. Proposed Rule 4410.7030 Subpart 1 (D) should be amended to require notice be provided to property owners who are identifiable with reasonable effort.

Adequate notice of the CON application must be provided to affected members of the public to allow meaningful participation in the CON process. Notice should be given, at a minimum, to any person who will receive notice of the site or route permit application and the same rules for publication should apply. The applicant must prepare the notice list for the site and route permitting process in any event. So there is little additional burden on the applicant by requiring the notice to be provided at this time. MCEA recommends the following language change which incorporates the notice requirement from Minn. Rules 4400.1350 Subpart 5. This recommendation simply clarifies the parties to whom notice must be provided and ensures that the notice requirements are consistent between the CON and site and route permitting processes.

4410.7030 PROCESS FOR PREPARATION OF ENVIRONMENTAL REPORT

Subpart.1. Notice to interested persons. . . Notice must be mailed to the following persons . . .

D. each owner whose property is adjacent to any of the proposed sites for a large electric power generating plant or within any of the proposed routes for a high voltage transmission line identified in the certificate of need application. For purposes of giving notice under this subpart, owners are those persons shown on the records of the county auditor or, in any county where tax statements are mailed by the county treasurer, on the records of the county treasurer, or any other list of owners approved by the chair.

C. The standard for including an impact or alternative in Proposed Rule 4410.7030 Subpart 6 should be amended to provide the public with a greater ability to determine the impacts and alternatives to be analyzed.

This subpart creates a substantial burden for members of the public wishing to have an impact or alternative included in the environmental review. As drafted, the amended rules require that members of the public demonstrate that analysis of an impact or alternative will assist the PUC in making its decision regarding the CON application. This standard fails to provide an objective basis by which the public or the EQB may determine which alternatives are necessary for inclusion.

The standard for including an impact or alternative in the environmental review should be consistent with the existing body of Minnesota environmental regulation. The rules implementing the Minnesota Environmental Policy Act operate on the presumption that an alternative and potentially significant impacts will be included in the EIS and provides objective bases for exclusion. *See*, Minn. Rules 4410.2300 Subparts G & H. This standard would ensure that only certain impacts or alternatives that merit serious consideration in the environmental report are included while also providing a substantive standard for including or excluding such standards. MCEA recommends the following language be incorporated into the CON environmental review rules regarding the selection of alternatives and impacts to be considered in the Environmental Report:

4410.7030 PROCESS FOR PREPARATION OF ENVIRONMENTAL REPORT.

Subp. 6. **Alternatives and impacts.** . . .The chair may exclude ~~shall include the alternative or impact in the environmental report only if the chair determines that the evaluation will assist the PUC in its decision on the certificate of need application or HVTL certification request.~~ an alternative from analysis in the Environmental Report if it would not meet the underlying need for or purpose of the project, it would likely not have any significant environmental benefit compared to the project as proposed, or another alternative, of any type, that will be analyzed in the EIS would likely have similar environmental benefits but substantially less adverse economic, employment, or sociological impacts. The chair may exclude an impact from analysis in the Environmental Report if it is not likely to be a potentially significant direct or indirect, adverse, or beneficial effect of the proposed facility.

II. THE PROPOSED RULES SHOULD BE CLARIFIED AND MODIFIED TO ENSURE THE ADEQUACY OF ENVIRONMENTAL REVIEW.

The proposed amendments to the rules occasionally are unclear whether certain alternatives must be included in the environmental report. Several minor clarifications can ensure that all of the necessary information is included in the Environmental Report and remove any ambiguity as to the content of the report. The rules should also be modified to ensure that the environmental review conducted during the CON process is consistent with the requirements of Minn. Stat. § 116D.04.

A. Proposed Rule 4410.7030 Subpart 7 should be amended to clarify that the alternatives required by 4410.7035 Subpart 1 (B) must be considered in addition to alternatives added to the analysis pursuant to 4410.7030 Subpart 7.

As currently drafted, it is unclear whether the alternatives chosen by the chair to be included in the environmental report under proposed rule 4410.7030 Subpart 7 are in addition to or in lieu of the required alternatives included in proposed rule 4410.0735 Subpart 1 (B). It appears that the chair's determination of the alternatives to be included in the environmental report is intended to specify the precise alternatives to be considered in the report and to require additional alternatives to those required under Proposed Rule 4410.0735 Subpart 1 (B). This intent can be clarified through the following language change:

4410.7025 COMMENCEMENT OF ENVIRONMENTAL REVIEW

Subp. 7. **Chair decision.** Within ten days after close of the public comment period, the chair shall issue an order determining the following:

A. the alternatives to be addressed in the environmental report including the alternatives required by 4410.7035, Subp. 1(B) and any additional alternatives proposed under subpart 6 of this section.

B. Proposed Rule 4410.7060 Subparts 1 and 2 should be amended to clarify that the EIS must include analysis of all of the alternatives required by rule 4410.7035.

The Proposed Rules allow the EQB, in certain circumstances, to prepare a single environmental review document for both the CON and site and route permitting environmental review. The rules allow the EQB to produce either an environmental assessment or an environmental impact statement pursuant to the 4400 Rules for site and route permitting. The rules allowing consolidated environmental review should be amended to clarify that the environmental assessment (“EA”) or environmental impact statement (“EIS”) shall include the analysis of all the alternatives required by the CON rules. At the present time, the 4400 Rules allow, but do not require, the analysis of questions of need (such as size, type, timing, voltage, and system configuration) when a certificate of need has not been issued for the proposed project. This clarification will ensure that the consolidated environmental review is complete and accurate.

4410.7060 JOINT PROCEEDINGS

Subpart 1. **Environmental assessment.** In the event an applicant for a certificate of need for a LEPGP or a HVTL has also applied to the EQB for a site permit or route permit, and the project qualifies for alternative review by the EQB under part 4400.2000, the EQB may elect to prepare an environmental assessment in accordance with part 4400.2750 in lieu of the environmental report required under part 4410.7020. If the EQB makes this election the EQB shall include in the environmental assessment the analysis of alternatives required by 4410.7035, but it is not required to prepare an additional environmental report under parts 4410.7010 to 4410.7070.

Subp. 2. **Environmental impact statement.** In the event an applicant for a certificate of need for a LEPGP or a HVTL has also applied to the EQB for a site permit or route permit, and the project does not qualify for alternative review by the EQB under part 4400.2000, the EQB may elect to prepare an environmental impact statement in lieu of the environmental report required under part 4410.7020 if the applicant agrees to the additional time that will be required to prepare the environmental impact statement. In this event, the EQB shall include in the EIS the analysis of alternatives required by 4410.7035, but is not required to prepare an additional environmental report under part 4410.7020.

Additionally, the Proposed Rules should be amended to clarify that when the EQB conducts consolidated environmental review the EA or EIS must be provided to the PUC and that the PUC may direct the EQB to supplement the EA or EIS. This language change clarifies the intent that the consolidated environmental review is intended to serve the same purpose as the environmental report ordinarily prepared during the CON process.

4410.7050 ENVIRONMENTAL REPORT TO ACCOMPANY PROJECT

Subpart 1. **PUC decision.** The environmental report or the environmental assessment or environmental impact statement prepared pursuant to 4410.7060 must be completed and a copy provided to the Public Utilities Commission before the PUC can commence any public hearing or render a final decision on an application for a certificate of need or for certification of a HVTL. The EQB staff shall participate in the PUC proceeding and be available to answer questions about the environmental report or EIS prepared pursuant to

4410.7060 and to respond to comments about the document. The environmental report or EIS prepared pursuant to 4410.7060 must be considered by the PUC in making a final decision on a certificate of need or HVTL certification request.

Subp. 2. **Completeness of environmental report.** At the time the PUC makes a final decision on a certificate of need application or a request for certification of a HVTL, the PUC shall determine whether the environmental report and the record created in the matter address the issues identified by the chair in the decision made pursuant to part 4410.7030, subpart 7. The PUC may direct the EQB to prepare a supplement to the environmental report or the environmental assessment or environmental impact statement prepared pursuant to 4410.7060 if the PUC determines that an additional alternative or impact should be addressed or supplemental information should be provided.

C. Proposed Rule 4410.7035 Subpart 1 (F) should be amended to ensure that environmental review conducted during the certificate of need process is in accordance with the requirements of Minn. Stat. § 116D.04.

In previous comments, MCEA recommended that the EQB, as the expert agency engaging in environmental review, should provide the PUC with a recommendation based upon the environmental review document. To the extent that the EQB is unwilling to amend the rules to require such a recommendation, the EQB should identify the alternatives that may be feasible and prudent alternatives analyzed in the environmental report.

The CON decision is subject to provisions of MEPA that permit the EQB to delay implementation of any agency decision significantly affecting the environment that is inconsistent with MEPA. Minn. Stat. 216B.243, Subd. 7. The EQB “may reverse or modify the decisions or proposal where it finds, upon notice and hearing, that the action or project is inconsistent with the policy and standards of sections 116D.01 to 116D.06.” Minn. Stat. 116D.04, Subd. 9.

By identifying the possible feasible and prudent alternatives analyzed in the report, the EQB will assist the PUC in ensuring that the CON decision is consistent with the MEPA requirements. The language change proposed by MCEA would not require a final recommendation from the EQB, but rather simple identification of the alternatives that the PUC should seriously consider to ensure compliance with MEPA in the first instance. The following minor language change is suggested:

4410.7035 CONTENT OF ENVIRONMENTAL REPORT

Subpart 1. **Content of environmental report.** The environmental report must include the items described in items A to H. . .

F. An analysis of the feasibility of each alternative considered and an identification of all alternatives that may be feasible and prudent alternative consistent with the requirements of Minn. Stat. 116D.04, Subd. 6.

CONCLUSION

The recommendations contained in these comments are intended to protect public participation in the CON process and ensure the adequacy of environmental review. MCEA respectfully requests that these comments be incorporated into the final amendments to Minnesota Rules chapters 4400 and 4410.

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